

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 2nd February, 1996.

CRIMINAL APPEAL NO. 1320 OF 1986

For Approval and Signature:

THE HON'BLE MR. JUSTICE R.R. JAIN

And

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

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Shri K.P. Raval, Addl. Public Prosecutor for the appellant.

Shri M.J. Budhbhatti, Advocate for the respondents.

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Coram: R.R. Jain, J. & H.R. Shelat, J.

(2-2-1996)

ORAL JUDGMENT: (Per: H.R. Shelat, J.)

The respondent and Khima Dharnant were tried of the offences under Section 307. 341 read with Section 114 of Indian Penal Code and Section 25(1)(a) of the Arms Act before the Court of the then learned Additional Sessions Judge at Jamnagar after the case was committed and registered as Sessions Case No. 52 of 1984 and came to be acquitted after the hearing was over. The prosecution being aggrieved by the order of acquittal has

preferred this appeal. Rama Bhikha is having 6 brothers. He is the eldest. Between his family and the family of Dharnant Meru, there is long standing enmity. Often the criminal cases and chapter cases are being filed by one against the another. They are therefore the arch-rivals. In connection with the chapter case they had been to Junagadh and had returned on the next day. As the matter was posted for hearing they were required to attend the office of the Executive Magistrate. After going home in the evening Rama Bhikha asked Abha and Mepa to go to the field and bring tractor so that they could along with many others go to the office of the Executive Magistrate for the purpose of attending the chapter case. On 20th March 1984 at 17.00 hours Abha Rama and Mepa Bhikha were going to the field for the purpose of bringing the tractor. They reached near the house of Khima Dharnant. At that time both the respondents and Khima Dharnant came out. Khima Dharnant was armed with Tamancha. The appellants caught hold Mepa Bhikha and Khima Dharnant fired the Tamancha. As a result Mepa Bhikha sustained injury on the abdomen. Leaving the Tamancha there, appellant and Khima Dharnant ran away. Abha Rama went to Rana Bhikha and informed about the incident. A complaint was then lodged before the police and after the investigation was over the chargesheet against Hima Dharnant and both the respondents came to be filed and in due course the case was committed to the Court of Sessions at Jamnagar. The respondents and Khima Dharnant pleaded not guilty when charge was framed. At the conclusion of the hearing, the learned Judge found that prosecution had failed to establish the charge beyond reasonable doubt and therefore he acquitted all the three. The present appeal is therefore filed by the prosecution before us.

2. Before we proceed to dissect the merits of the rival submissions, it may be mentioned at this stage that Khima Dharnant died during the pendency of the appeal and therefore appeal against him abated. Necessary order in that regard has been passed on 17th August 1989. We have therefore to consider the case qua the respondents.

3. The learned Additional Public Prosecutor, Mr. Raval took us to the entire evidence so as to show that the learned Judge committed the error despite overwhelming evidence on the point. Rana Bhikha, Mepa Bhikha and Abha Rama had supported in clear terms the case advanced but the learned Judge fell into error in discarding the evidence of these 3 witnesses. He therefore urged us to consider the case and on the basis of that evidence, convict the respondents.

4. Even if we agree on all different points advanced before us, there is one point on which the whole case topples down and when that point goes to the root of the case, we do not think it proper to dwell upon all other submissions made on behalf the

appellant-prosecution. After the Tamancha was fired Mepa Bhikha was injured. He sustained bleeding injuries and that is borne out from the evidence of Rama Bhikha. About one hour after the incident with the help of the police head constable, Rama Bhikha and others lifted Mepa Bhikha and put him into the rickshaw for the purpose of taking him to the hospital for treatment. At that time he was bleeding. If that is so, on the ground blood must have been found but it is pertinent to note that when police reached to the scene of offence for the purpose of drawing the panchnama, it found no blood mark. When the blood marks are not found though ought to have been, what can be the effect has been dealt by the .....Court. It has been made clear in the case of.....vs....., ....., that if the blood is not found at the scene of incident, it would certainly discredit the truth of the prosecution case and the accused is entitled to benefit thereof. In this case, when the blood is not found, the versions of all the three witnesses on which the prosecution relies, much can be said to have been tainted with by us because of the long standing past enmity and their testimony cannot be termed trustworthy or credible. Their testimony can be accepted only if there is independent convincing corroboration which is lacking in this case. The learned Judge was therefore perfectly right in not placing reliance on the evidence of the three witnesses referred to hereinabove. If we refer the panchnama of the scene of offence (Exh.60) drawn on the next day, the police while closely watching the place found some marks indicating that a person must have lied down if those marks were visible on the next day, the blood ought to have been. The police also could find Tamancha there but not the blood marks. Such facts appearing on record give a reason to hold that the theory advanced in defence may be probable. It was submitted on behalf of the respondents that because of the arch-rivalry, a case was engineered.

5. When the abovestated point goes to the root of the case and shakes the credibility of all the 3 witnesses, we see no justification to upset the judgment and order of the lower Court convicting the respondents. The appeal, therefore, requires to be dismissed and accordingly it is hereby dismissed.

6. The bail bonds executed by the respondents shall stand cancelled.

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